

**MINUTES**

**North Dakota State Water Commission  
Bismarck, North Dakota**

**April 2, 1992**

The North Dakota State Water Commission held a meeting in Lecture Rooms A and B in the North Dakota Heritage Center, Bismarck, North Dakota, on April 2, 1992. Chairman, Lieutenant Governor, Lloyd Omdahl, called the meeting to order at 2:00 PM, and requested State Engineer and Chief Engineer-Secretary, David Sprynczynatyk, to call the roll. The Chairman declared a quorum was present.

**MEMBERS PRESENT:**

Lieutenant Governor Lloyd Omdahl, Chairman  
Sarah Vogel, Commissioner, Department of Agriculture, Bismarck  
Joyce Byerly, Member from Watford City  
Marjorie Farstveet, Member from Beach  
Jacob Gust, Member from West Fargo  
Lorry Kramer, Member from Minot  
Daniel Narlock, Member from Grand Forks  
Norman Rudel, Member from Fessenden  
Jerome Spaeth, Member from Fargo  
David Sprynczynatyk, State Engineer and Chief Engineer-Secretary, North Dakota State Water Commission, Bismarck

**OTHERS PRESENT:**

State Water Commission Staff Members  
Approximately 20 people in attendance interested in agenda items

The attendance register is on file in the State Water Commission offices (filed with official copy of minutes).

The meeting was recorded to assist in compilation of the minutes.

**APPROVAL OF AGENDA**

In consideration of the agenda, a report on the enhancement of the operations of the State Water Commission and the Atmospheric Resource Board was requested. The Chairman declared the agenda approved and requested Secretary Sprynczynatyk to present the agenda.

**REPORT OF NO-NET LOSS  
OF WETLANDS COORDINATOR  
(SWC Project No. 1489)**

At the March 13, 1991 meeting, the State Water Commission approved the expenditure of up to \$10,000 from the Contract

Fund for the No-Net Loss of Wetlands Coordinator for a period of one year. Charon Johnson was hired to fill this position and agreed to make periodic reports to the State Water Commission on the project progress.

Secretary Sprynczynatyk stated the costs for the No-Net Loss of Wetlands Coordinator were estimated at \$30,000 for a period of one year. The Garrison Diversion Conservancy District, the North Dakota Game and Fish Department and the State Water Commission participated in the costs and contributed up to \$10,000 each. Secretary Sprynczynatyk reported that Environmental Protection Agency grant funds have been approved to match the \$30,000 obligated by the three agencies to retain the No-Net Loss of Wetlands Coordinator for an 18-month period.

Charon Johnson stated that approximately 75 percent of his time is spent on the no-net loss effort and the other 25 percent is committed to working for the Garrison Diversion Conservancy District. Mr. Johnson explained the duties and responsibilities of the No-Net Loss of Wetlands Coordinator. He said every effort is being made work with the farmers to properly implement the no-net loss of wetlands program and to realize the benefits of the program.

Mr. Johnson made reference to several wetland projects in North Dakota that he has been involved in and explained the problems and frustrations involved in complying with federal rules and regulations relating to the no-net loss of wetlands program. Mr. Johnson commented that these circumstances the farmers have generally expressed a desire to cooperate in these efforts.

Mr. Johnson briefed the Commission members on meetings held in Washington, DC with local, state and federal representatives to discuss the Grand Harbor project in Ramsey County and the federal wetlands rules and regulations. Keith Bjerke, Administrator of the Agricultural Stabilization and Conservation Service of the Department of Agriculture, toured the Grand Harbor project in November, 1991. Mr. Johnson indicated the meetings and tour went well and those who participated had a better understanding of the project. He commented that the local and state cooperative efforts to implement the no-net loss concept in North Dakota were impressive at the federal level.

April 2, 1992

**CONSIDERATION OF MINUTES  
OF FEBRUARY 4, 1992 MEETING -  
APPROVED**

The minutes of the February 4, 1992 meeting were approved by the following motion:

It was moved by Commissioner Narlock, seconded by Commissioner Byerly, and unanimously carried, that the minutes of the February 4, 1992 meeting be approved as circulated.

**CONSIDERATION OF MINUTES  
OF MARCH 11, 1992 TELEPHONE  
CONFERENCE CALL MEETING -  
APPROVED**

The minutes of the March 11, 1992 telephone conference call meeting were approved by the following motion:

It was moved by Commissioner Narlock, seconded by Commissioner Byerly, and unanimously carried, that the minutes of the March 11, 1992 telephone conference call meeting be approved as circulated.

**AGENCY FINANCIAL STATEMENT**

Charles Rydell, Assistant State Engineer, presented and discussed the Program Budget Expenditures, dated February 29, 1992, reflecting 33.3 percent of the current biennium. Mr. Rydell reviewed and explained the expenditures from Contract Fund for the 1991-1993 biennium.

Mr. Rydell stated that on March 31, 1992 the Office of Management and Budget distributed the guidelines to state agencies for preparing their 1993-1995 biennium budget.

**CONSIDERATION OF REQUEST  
FROM WALSH COUNTY WATER  
RESOURCE DISTRICT FOR  
COST SHARING FROM CONTRACT  
FUND FOR SNAGGING AND  
CLEARING OF PARK RIVER  
(SWC Project No. 662)**

A request was presented for the Commission's consideration from the Walsh County Water Resource District for cost sharing in snagging and clearing on the Middle Branch of the Park River upstream of Grafton.

Jim Lennington, State Water Commission Water Development Division, presented the request and indicated the project consists of removing dead trees, stumps

April 2, 1992

and standing trees in danger of falling into the channel along approximately seven miles of the river. A report by the Walsh County Highway Department containing a cost estimate for snagging and clearing approximately 42 river miles of the Park River and its tributaries in Walsh County accompanied the letter of request for cost sharing.

Mr. Lennington stated the board wishes to use county crews to perform maintenance work on approximately seven miles of river channel each year. The cost estimate for this year's portion is \$59,833. All of these costs are eligible for 25 percent cost sharing, which would amount to \$14,958. Mr. Lennington explained the cost estimate does not include engineering costs which are to be completely borne by the county. The location of this year's work begins at the confluence of the Middle and South Branches of the Park River in Section 10, Township 157 North, Range 53 West, and extends upstream to approximately the quarter line between the NE1/4 and NW1/4 of Section 20, Township 158 North, Range 54 West. Work on the project began on January 6, 1992.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing in 25 percent of the eligible costs, not to exceed \$14,958 from the Contract Fund, contingent upon the availability of funds.

Dennis Marksmen, Walsh County Water Resource District, further described the project and requested favorable consideration of their request.

It was moved by Commissioner Narlock and seconded by Commissioner Rudel that the State Water Commission approve cost sharing of 25 percent of the eligible costs, not to exceed \$14,958 from the Contract Fund, for snagging and clearing the Middle Branch of the Park River. This motion is contingent upon the availability of funds.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

April 2, 1992

**CONSIDERATION OF REQUEST  
FROM RAMSEY COUNTY WATER  
RESOURCE DISTRICT FOR  
COST SHARING FROM CONTRACT  
FUND FOR ADDITIONAL COSTS  
FOR GRAND HARBOR WATER  
MANAGEMENT PROJECT  
ENGINEERING STUDY  
(SWC Project No. 1804)**

On March 19, 1990, the State Water Commission approved cost sharing of 50 percent for the Grand Harbor Water Management Project engineering study. The study was estimated to cost approximately \$10,000, however, the actual cost of the study was \$21,000.

Cary Backstrand, State Water Commission Water Development Division, presented a request for the Commission's consideration to cost share in the actual costs of \$21,000 for the Grand Harbor Water Management Project engineering study.

Mr. Backstrand indicated the purpose of the study was to develop an overall plan for the Grand Harbor Watershed Management Project. The project area is located in Ramsey County just west of Dry Lake. There is a long history of flooding problems within the watershed that resulted in damages to the roadway system and cropland. Mr. Backstrand said a number of attempts have been made in the past to alleviate the flooding problems, which have resulted in some limited amount of success. Several years ago, a permit was requested to improve the existing drainage channel from this area, but because of the high construction costs, the landowners withdrew the application and filed a second application for a scaled-down project that required a pump at the downstream end. The application was approved and the project that resulted has provided some reduction in flood damages.

Some of the on-farm drains that were originally contemplated had not been developed due to the passage of the 1985 farm bill, particularly the Swampbuster provisions of that Act. Mr. Backstrand indicated the District has requested a commencement determination from ASCS but he said it appears unlikely that such a determination will be forthcoming. The District has been working with the US Fish and Wildlife Service, Ducks Unlimited and others to develop a watershed management project based on the no-net loss concept. The Garrison Diversion Wetlands Trust has purchased land in the project area, with the intent of restoring and creating wetlands as part of the overall Grand Harbor Watershed Management Project. Additional wetlands will be constructed and/or restored on private lands within the project area to fulfill the no-net loss goal.

Mr. Backstrand indicated that because of the many interests involved in this project and the need for permits under state law, the development of the single

April 2, 1992

plan for total project development has been consistently advocated. American Engineering was retained to develop such a plan, however, because of the many interests and agencies involved, including the US Fish and Wildlife Service, the Wetlands Trust, Ducks Unlimited, Ramsey County Water Resource District and private landowners, the development of the project became extremely complex. All of the groups involved in the development of this no-net loss project have been very cooperative and feel that this project can clearly demonstrate that agricultural and environmental interests can and should work together in developing comprehensive water management projects that provide benefits to both.

It was the recommendation of the State Engineer that the State Water Commission approve funding 50 percent of the actual costs, which will result in an additional \$5,500 of state funds, for the Grand Harbor Water Management Project engineering study.

Michael Gunsch, American Engineering, commented on the study and indicated the additional costs involve significant modifications to the original project to conform with the no-net loss concept.

Robert Garske, Richard Regan and Wayne Simon, Ramsey County Water Resource Board members, elaborated on the project and expressed appreciation to the Commission for its support of projects in Ramsey County.

It was moved by Commissioner Spaeth and seconded by Commissioner Vogel that the State Water Commission approve additional cost sharing of 50 percent, not to exceed \$5,500 from the Contract Fund, for the Grand Harbor Water Management engineering study. The total costs allocated from the Contract Fund for this project shall be \$10,500. This motion shall be contingent upon the availability of funds.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

April 2, 1992

**CONSIDERATION OF REQUEST  
FROM STARK COUNTY WATER  
RESOURCE DISTRICT FOR COST  
SHARING FROM CONTRACT FUND  
FOR REHABILITATION OF  
BELFIELD DAM PROJECT  
(SWC Project No. 1865)**

A request was presented for the Commission's consideration from the Stark County Water Resource District to cost share in the rehabilitation of the Belfield Dam project.

Gregg Thielman, State Water Commission Water Development Division, presented the request noting the purpose of the project is to rehabilitate a small dam located near the City of Belfield to provide recreational opportunities for residents of southwest North Dakota. The land surrounding the dam and reservoir will be used as mitigation acres for the Belfield Watershed Project, which is being implemented by the Soil Conservation Service to reduce flooding through the City of Belfield.

The rehabilitation project consists of raising the embankment, installing a new principle spillway, constructing a new emergency spillway, and excavating sediment from the reservoir bottom. The total project cost estimate is \$75,000. Of this cost estimate, all costs are eligible for 33 percent cost sharing, which would amount to \$25,000. Mr. Thielman indicated the overhead costs include engineering, inspection, contract administration, and contingencies. Of these costs, engineering, inspection and contract administration would be done by the State Water Commission staff, therefore, these costs would be considered part of the State Water Commission's share. The amount required from the Contract Fund would be \$11,000.

It was the recommendation of the State Engineer that the State Water Commission approve cost sharing of 33 percent of the eligible costs, not to exceed \$25,000, of which \$11,000 would be from the Contract Fund and \$14,000 would be for in-kind staff engineering services, for the rehabilitation of the Belfield Dam project.

Nick Kessel and Russell Nelson, Stark County Water Resource Board members, appeared before the Commission. They explained the project and requested the Commission's favorable consideration of their request for cost sharing.

**It was moved by Commissioner Byerly and seconded by Commissioner Rudel that the State Water Commission approve 33 percent cost sharing of the eligible items for the rehabilitation of the Belfield Dam**

**April 2, 1992**

project in Stark County, not to exceed \$25,000. Of this amount, \$11,000 would be from the Contract Fund and \$14,000 would be for in-kind staff engineering services. This motion is contingent upon the availability of funds.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**CONSIDERATION OF REQUEST  
FROM AG DIVERSIFICATION,  
HIGH-VALUE IRRIGATED CROPS  
TASK FORCE, FOR COST SHARING  
FROM CONTRACT FUND IN AN  
IRRIGATION DISTRICT AND VALUE-  
PROCESSING DEVELOPMENT PROJECT  
(SWC Project No. 1389)**

A request was presented for the Commission's consideration from the Ag Diversification, High-Value Irrigated Crops Task Force, to cost share in an irrigation district and value-processing development project.

Secretary Sprynczynatyk stated the task force is made up of representatives from a number of organizations, including producers interested in the development of high-valued irrigated crops and value-added processing of those crops. Funds have been solicited from a number of organizations to match a grant of \$16,830 from the Agricultural Products Utilization Commission. These funds will be used to hire a coordinator to promote irrigation development and high-value crop production and marketing with emphasis on irrigation district development.

Secretary Sprynczynatyk said the diversification of our agricultural production base to high-value crops and their processing is a significant component of economic development activities in North Dakota. He said many people and organizations have been actively involved for many years at the processor level. However, there needs to be additional effort focused at the local level to coordinate the activities of producers who need to play an active part in developing these opportunities.

One of the principle responsibilities of the coordinator will be assisting in the explanation of the organization of irrigation districts and how they may be an advantage to the producer. Because these districts are organized by the State Engineer, a local coordinator should reduce the time agency staff may need to spend in transferring information to groups and individuals.

April 2, 1992

It was the recommendation of the State Engineer that because this is a constructive effort toward the development of the state's water resources and economic development, the State Water Commission approve the expenditure of \$2,000 from the Contract Fund to support this effort.

It was moved by Commissioner Vogel and seconded by Commissioner Kramer that the State Water Commission approve the expenditure of \$2,000 from the Contract Fund to support the request from the Ag Diversification, High-Value Irrigated Crops Task Force efforts in an statewide irrigation district and value-processing development project.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -  
PROJECT UPDATE AND  
CONTRACT STATUS  
(SWC Project No. 1736)**

Tim Fay, Manager of the Southwest Pipeline Project, reported that Contract 6, Data Handling and Telemetry, is the only active contract at this time.

The telemetry system has been installed and will soon be undergoing its 35-day test. The system has functioned very well from an operational standpoint and has been of great help in the project operations. Mr. Fay said all pump stations and reservoirs can now be monitored and controlled from the headquarters building in Dickinson.

Mr. Fay reported the problem with the control valve at the Dodge pump station has been corrected. The valve manufacturer has been highly cooperative in this process. New parts have been provided and installed and the valve appears to be functioning correctly.

With the installation of the telemetry system, Mr. Fay said it is now possible to track reservoir levels. He said it soon became apparent that the Zap reservoir was slowly dropping at an estimated rate of loss of 30 gallons per minute. The location of the leak was discovered near the Spring Creek crossing at Dodge and excavation indicated the cause to be a rubber gasket at a pipe joint. Mr. Fay reported the repairs were accomplished on March 18, 1992 and the pipeline is back in service.

April 2, 1992

Mr. Fay indicated the Southwest Water Authority is working toward the completion of the rural water sign-up campaign on April 1, 1992. After this date, the membership fees will increase. Mr. Fay stated as of April 1, 1992, approximately 2000 memberships had been recruited.

**SOUTHWEST PIPELINE PROJECT -  
CONSIDERATION AND APPROVAL TO  
ENTER INTO AGREEMENT WITH  
POTENTIAL USERS TO PROVIDE  
LARGER THAN STANDARD  
SERVICE LINE  
(SWC Project No. 1736)**

Mr. Fay indicated that in the sign-up process some potential users inquired about the possibility to be provided with a larger than standard service line. Mr. Fay said an example would be a trailer court that wishes to provide services for

currently unoccupied lots. Since this would require additional capital costs without additional capital repayment, Mr. Fay stated the incremental capital cost should be borne by the potential user.

It was the recommendation of the State Engineer that the State Water Commission approve entering into an agreement with potential users that request to be provided with a larger than standard service line and that the incremental capital cost be borne by the potential user.

It was moved by Commissioner Byerly and seconded by Commissioner Narlock that the State Water Commission approve entering into an agreement with potential users that request to be provided with a larger than standard service line and that any additional costs incurred to provide the greater capacity shall be borne by the potential user.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -  
CONSIDERATION AND APPROVAL  
OF POLICY TO PROVIDE RAW  
WATER AT LOCATIONS ALONG  
RAW WATER TRANSMISSION LINES  
(SWC Project No. 1736)**

Mr. Fay stated there are locations along the raw water transmission lines which could be provided raw water with very little construction cost. Mr. Fay said a meter, pressure reducing valve and minimal piping

and valving to attach to a blowoff or air valve would be required

April 2, 1992

to provide this service. Examples would be lawn or garden watering and livestock watering. Mr. Fay said in order to provide this type of service, a policy is required by the Commission.

The following principles were presented for the Commission's consideration for inclusion in a policy to provide raw water along the raw water transmission lines:

- 1) Service to each such location will be decided on a case-by-case basis, considering existing demands, location, convenience of access to transmission piping, and seasonal factors;
- 2) The State Water Commission will provide only the pressure reducing valves, isolation valves, and piping necessary to bring the water above the ground surface;
- 3) The State Water Commission will assume no liability;
- 4) The user will disconnect his system from the pipeline before freezing weather sets in;
- 5) Service will be under the terms of a five-year contract;
- 6) The water use fee will be the contemporary fee for water service contracts less the cost of treatment; and
- 7) Other terms and conditions will be similar to those of existing water service agreements.

It was the recommendation of the State Engineer that the State Water Commission adopt the principles as presented for a policy to provide raw water to users along the project's raw water transmission lines.

**It was moved by Commissioner Rudel and seconded by Commissioner Vogel that the State Water Commission adopt the principles as recommended by the State Engineer for inclusion in a policy to provide raw water to users along the Southwest Pipeline raw water transmission lines.**

April 2, 1992

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -  
WATER SERVICE CONTRACTS STATUS  
(SWC Project No. 1736)**

The cities of New England and Reeder have passed resolutions to enter into water service contracts with the Southwest

Pipeline. Hazen has requested information regarding water service.

Mr. Fay indicated that on April 7, 1992, one of the issues in Belfield's city election will be whether to enter into a water service contract with the project.

Petitions are currently circulating in Bowman to put that city's water service contract to a city-wide vote.

Secretary Sprynczynatyk indicated the Assistant Attorney General assigned to the Southwest Pipeline Project is reviewing the North Dakota Century Code pertaining to water service contracts and the purchase of water. He indicated there appears to be conflicting legislation on the issues and suggested an Attorney General's opinion be requested for legislation clarification and to determine if the Southwest Pipeline Project contracts the Commission has with the entities are valid. The Commission members concurred that an Attorney General's opinion be requested by the State Engineer.

**SOUTHWEST PIPELINE PROJECT -  
PILOT PROGRAM WITH SOIL  
CONSERVATION SERVICE TO  
CONSTRUCT LIVESTOCK WATERING  
SYSTEMS WITHIN PROJECT AREA  
(SWC Project No. 1736)**

At the February 4, 1992 meeting the Commission members were informed that the Soil Conservation Service is developing a pilot program under its' P.L. 566 authority to construct livestock watering systems

within the Southwest Pipeline Project.

Several informal meetings have been held, and on February 24, 1992, a meeting was held which was attended by local and federal representatives of the Soil Conservation Service. Mr. Fay stated this meeting revealed that the cost sharing and other guidelines are more flexible than expected. He said it appears there is a strong desire at the

April 2, 1992

Soil Conservation Service's federal level to develop a pilot project with this authority in the Taylor area. Further meetings and discussions will develop details of such a project.

**SOUTHWEST PIPELINE PROJECT -  
CONSIDERATION AND APPROVAL  
FOR DICKINSON TREATMENT  
PLANT UPGRADE  
(SWC Project No. 1736)**

Mr. Fay indicated that the City of Dickinson has requested funding for the upgrade of the water treatment plant. The majority of the requested items are consistent with the upgrade

features envisioned when the treatment plant alternatives were being reviewed. Mr. Fay stated that the costs for deferred maintenance are not permitted by the legislation authorizing use of the Dickinson plant. Funding for items relating to the city's distribution system are also not permitted by the MR&I guidelines. Mr. Fay said the individual items requested by the City of Dickinson were reviewed for the purpose of separating out the deferred maintenance and costs associated with distribution.

The present capacity of the Dickinson treatment plant is at least six million gallons per day, which is generally adequate to meet the city's current needs, but there are certain items that should be done to enhance the plant's compatibility with the Southwest Pipeline Project.

Mr. Fay stated it has been suggested the plant be upgraded in phases, with Phase I consisting of the immediate need compatibility items, and Phase 2 consisting of the capacity upgrade features. Mr. Fay explained the Phase 2 components are not finalized at this time and they will be incorporated into an overall plan which addresses the amount of capacity actually needed and the scheduling of the components. Although the additional capacity is not needed immediately, Mr. Fay said the upgrade should be started in order to insure the plant has adequate capacity to serve the other communities and rural areas as they are brought on line.

It was the recommendation of the State Engineer that the State Water Commission approve funding of the following items of Phase I for the Dickinson treatment plant upgrade, in the amount of \$146,160:

<u>Phase 1</u>	<u>Cost</u>
1. Telemetry	\$ 116,000
2. Raw Water Valve	17,400
3. Finished Water Meter	12,760
Phase 1 Total	<u>\$ 146,160</u>

April 2, 1992

It was moved by Commissioner Gust and seconded by Commissioner Spaeth that the State Water Commission approve funding in the amount of \$146,160 for Phase 1 for the items as recommended by the State Engineer for the Dickinson water treatment plant upgrade.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**SOUTHWEST PIPELINE PROJECT -  
WEST FARGO STATE BANK LAWSUIT  
(SWC Project No. 1736)**

During the Water Commission's telephone conference call meeting on March 11, 1992, a report was given on the status of the lawsuit by West Fargo State Bank against the Water Commission regarding payment of \$32,000 from a contractor's retainage to Stark County. The chronology of events in this issue is attached hereto as APPENDIX "A".

Mr. Fay explained that since the District Court ruled against the State Water Commission on March 3, 1992, the State Water Commission essentially has three options:

- 1) Appeal. The Water Commission can appeal the decision to the North Dakota Supreme Court. This course of action will cost approximately \$5,000 in attorney's fees. In addition, interest will continue to accrue at a rate of approximately \$800 per month. The earliest an appeal could be heard is June, however, it is more likely that the case would not be heard until September since the court does not hear cases in July and August. If the Supreme Court upholds the District Court's decision, the Water Commission could owe the bank substantially more. The Assistant Attorney General that represents the state, only gives the Water Commission an even chance at best of winning an appeal. Considering the judge ruled against us from the bench, our chances may be considerably less than 50 percent.
- 2) Sue Stark County. We recently contacted George Berger, Chairman of the Stark County Commission, in regard to a possible cost share of the total

April 2, 1992

bill, however, he quickly declined. An agreement was negotiated with Stark County and they complied with their end of the agreement. The State Water Commission paid \$32,000 out of retainage to Stark County. At this point, more than one year has passed since the construction contract was completed and Stark County may no longer be able to go after the surety and, therefore, this option to sue Stark County cannot be supported.

- 3) Pay West Fargo State Bank \$32,000 plus interest of approximately \$16,000. This appears to be the best choice at this time.

Kris Moelter, Assistant Attorney General representing the state, explained the options available to the Commission from the legal standpoint. She advised the Commission that the best course of action at this time appears to pay the West Fargo State Bank \$32,000 plus interest of approximately \$16,000.

Secretary Sprynczynatyk explained to the Commission members that his decision to pay Stark County \$32,000 out of retainage was based on his interpretation of the contract and the specification stating that one of the purposes of the escrow account is to pay for claims against the contractor for the project. In this case, it was to the Stark County claim for an unpaid settlement on road damages.

It was moved by Commissioner Byerly and seconded by Commissioner Farstveet that the State Water Commission approve the expenditure of \$32,000 principal plus interest of approximately \$16,000, to the West Fargo State Bank. This expenditure relates to Southwest Pipeline Project Contract 2-3A.

Commissioners Byerly, Farstveet and Narlock voted aye. Commissioners Gust, Kramer, Rudel, Spaeth, Vogel, and Chairman Omdahl voted nay. The recorded vote was 3 ayes; 6 nays. The Chairman declared the motion lost.

April 2, 1992

It was moved by Commissioner Gust and seconded by Commissioner Spaeth that the State Water Commission appeal the judge's decision of March 3, 1992 to the North Dakota Supreme Court awarding \$32,000 and approximately \$16,000 interest to the West Fargo State Bank, relating to Southwest Pipeline Project Contract 2-3A.

Commissioners Gust, Kramer, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. Commissioners Byerly, Farstveit and Narlock voted nay. The recorded vote was 6 ayes; 3 nays. The Chairman declared the motion carried.

The Commission directed the State Engineer and the Assistant Attorney General to file a Notice to Appeal and continue negotiations for settlement with the West Fargo State Bank.

**DEVILS LAKE MANAGEMENT  
PROJECT UPDATE  
(SWC Project No. 1712)**

At the February 4, 1992 meeting the Commission members were advised that a draft copy of the Reconnaissance Report for the Devils Lake Study by the Corps of Engineers was received and that staff was reviewing the report. The draft indicated that there is at least one feasible alternative which justifies a feasibility study. This conclusion was based upon the St. Paul District's efforts and is currently being reviewed by higher headquarters in Chicago and Washington, DC.

The Commission authorized the State Engineer at its February 4, 1992 meeting to provide a letter of intent to the Corps of Engineers to proceed with the feasibility study for the Devils Lake Basin. The letter of intent provides the assurances that the State Water Commission understands the financial requirements and expresses the intent to become the local sponsor, or find an appropriate local sponsor from the Devils Lake Basin.

Secretary Sprynczynatyk informed the Commission members that the letter of intent has been forwarded to the Corps of Engineers in St. Paul. He indicated he has met with representatives in Washington, DC expressing the importance of moving ahead with the stabilization of Devils Lake.

LeRoy Klapprodt, State Water Commission Planning and Education Division, commented on the Conceptual Water Management Plan for the Devils Lake Basin, dated

April 2, 1992

October, 1991. The information in this report will support the Corps of Engineers reconnaissance study of the Devils Lake Basin, and was prepared by the State Water Commission at the request of the Corps of Engineers. Mr. Klapprodt stated the information compiled in the report originated from state and federal agency reports, university publications, and input from the special Devils Lake Task Force.

Additional input for this report came from the State Water Management Plan update process, which was conducted concurrently with the Corps of Engineers study. Mr. Klapprodt said the Devils Lake Basin is a portion of one of the eight public involvement regions organized to aid the state water plan update. Goals and objectives as well as the water management problems and development opportunity statements were developed in public meetings in the Devils Lake Basin.

Secretary Sprynczynatyk stated an appreciation letter is being sent to the Devils Lake Task Force members. The letter will also ask that the members continue serving on the task force for the purpose of assisting in the implementation of the recommendations of the Conceptual Water Management Plan for the Devils Lake Basin.

**DROUGHT DISASTER LIVESTOCK WATER ASSISTANCE PROGRAM UPDATE (SWC Project No. 1851)** Secretary Sprynczynatyk provided an update on the Drought Disaster Livestock Water Assistance Program. He reported 159 applications have been received, with 136 projects approved. The estimated total project costs are \$675,415, while cost share approved to date is \$236,289, based on estimated project costs. Actual costs are estimated at \$220,186 due to some projects being completed below estimates. Actual program expenditures, with cost share estimates for approved projects not yet finished, are kept in order to not exceed the \$250,000 allocated to the Drought Disaster Program. There are 113 completed projects with reported costs of \$396,834. To date, the State Water Commission has paid \$160,597. Withdrawn projects or projects resulting in dry holes total 11. Secretary Sprynczynatyk stated that to date, the entire \$250,000 allocated to this program has been obligated.

The Commission considered a request from Commissioner Vogel to change the rules for the Drought Assistance Program. The suggested change would delete the requirement for obtaining approval from the State Engineer prior to the start of construction.

Secretary Sprynczynatyk explained that any rule changes require compliance with the

April 2, 1992

Administrative Practice Act, which include public hearings and submittal to the Attorney General for an opinion as to its legality before adoption.

It was moved by Commissioner Byerly and seconded by Commissioner Vogel that the State Water Commission authorize the State Engineer to proceed in complying with the Administrative Practice Act to change the Drought Assistance Program rules and regulations. The change requested for the Drought Assistance Program would delete the requirement for obtaining approval from the State Engineer prior to the start of construction.

In discussion of the motion, it was suggested that the Chairman appoint a subcommittee to review the administration and issues of the Drought Assistance Program.

Commissioner Byerly withdrew her motion; Commissioner Vogel likewise withdrew her second to the motion.

Secretary Sprynczynatyk indicated staff is in the process of randomly inspecting projects throughout the state that received assistance from the Drought Assistance Program in order to review the program and determine problems from the farmers' standpoint.

It was moved by Commissioner Vogel and seconded by Commissioner Rudel that the Chairman appoint a subcommittee for the purpose of reviewing the Drought Assistance Program.

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, Vogel, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

Commissioners Vogel, Gust and Rudel were appointed to serve on the Drought Assistant Program subcommittee.

Commissioner Vogel leaves the meeting.

April 2, 1992

**GARRISON DIVERSION PROJECT -  
PROJECT UPDATE  
(SWC Project No. 237)**

Secretary Sprynczynatyk informed the Commission members that he testified in Washington, DC on March 25, 1992 on behalf of Governor Sinner before the Senate and House Committees on Appropriations, Subcommittee on Energy and Water Development, on the Garrison Diversion Project. The Administration's proposed budget for Fiscal Year 1993 has included \$30 million for the Garrison Project.

Secretary Sprynczynatyk briefed the Commission members on the annual meeting of the Garrison Diversion Funding Advisory Committee held March 13, 1992. Discussion by committee members during the meeting resulted in an agreed upon funding level request for Fiscal Year 1993 of \$39 million. This increased funding level from \$30 million to \$39 million was to address the municipal, rural and industrial water supply needs of the Indians and the State. Secretary Sprynczynatyk stated the testimony he presented included this increased request for the project.

Secretary Sprynczynatyk discussed draft proposed amendments and legislation to the Act of August 5, 1965 and the Garrison Diversion Unit Reformulation Act of 1986. The proposed amendments address the following:

- 1) Mid Dakota Dam and Sheyenne Lake
- 2) Stabilization of Devils Lake
- 3) Abandoned or oversized features
- 4) Indian Irrigation facilities
- 5) Sheyenne River treatment facilities
- 6) Adjustment to the authorization of appropriations
- 7) Wildlife enhancement
- 8) Irrigation facilities
- 9) Operation, maintenance and replacement of existing facilities

**GARRISON DIVERSION PROJECT -  
MR&I WATER SUPPLY PROGRAM UPDATE  
(SWC Project No. 237)**

Dale Frink, Director, State Water Commission Water Development Division, briefed the Commission members on the current status of projects approved for MR&I funding in 1992.

Mr. Frink stated an application has been received from the City of Devils Lake for MR&I Water Supply Program funding assistance for a water supply system. The city and the Devils Lake Sioux Tribe are discussing the city's current easement of their water transmission pipeline. A portion of the line is located on the Burlington Railroad right-of-way.

April 2, 1992

The line has been abandoned and the Tribe is questioning whether the city still has an easement to operate and maintain the water line. The Tribe may require the city to obtain new easements for the line, at an unknown cost, or to develop a new water source off the reservation.

Mr. Frink said this project will be difficult to prioritize. The city's existing source on the reservation appears to be at least equivalent to alternate sources off the reservation. The city may be asked to obtain a new easement or to make water payments to the Tribe, but Mr. Frink said this would likely be tested in court. Even if the city would incur some costs, the amount may not warrant building a new water system off the reservation.

**GARRISON DIVERSION PROJECT -  
CONSIDERATION AND APPROVAL  
OF MR&I PRIORITY RATING SYSTEM  
(SWC Project No. 237-3)**

Dale Frink presented and discussed a proposed new point rating system for prioritizing Garrison Diversion Unit municipal, rural and industrial water supply projects. SEE APPENDIX "B".

The priority system is a tool to assist the Commission in prioritizing MR&I funding requests. Mr. Frink said the new proposed point rating system was reviewed by the priority review committee, which consisted of Water Commissioners Gust and Rudel, and Garrison Diversion Conservancy District Directors Frank Orthmeyer and Rick Anderson. The committee has approved the proposal.

Mr. Frink explained that a total of 58 points will address the project need with water quantity as the highest priority followed by water quality. Various quantity and quality problems are listed with selected points given to each. The quantity problem of a water system will be based on its ability to produce various amounts of water per capita per day. North Dakota State Department of Health and Consolidated Laboratories' water quality records will be used to analyze the quality problem. Miscellaneous considerations will count for 42 of the total 100 points, with up to 9 of those points for special circumstances.

It was the recommendation of the State Engineer that the State Water Commission approve the new proposed MR&I priority system as presented.

Commissioners Gust and Rudel commented on the proposal and concurred with the State Engineer's recommendation for approval.

April 2, 1992

It was moved by Commissioner Gust and seconded by Commissioner Rudel that the State Water Commission approve the new Point Rating System for Prioritizing Garrison Diversion Municipal, Rural and Industrial Water Supply Project.  
SEE APPENDIX "B".

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**STATE WATER MANAGEMENT  
PLAN UPDATE  
(SWC Project No. 322)**

LeRoy Klapprodt, State Water Commission Planning and Education Division, reported there has been excellent response from the Water Resource Districts and the Joint Water Resource Districts in providing information to identify the projects and programs they anticipate being funded in the 1993-1995 biennium. He indicated this information is being used to prepare the early action portion of the State Water Management Plan that will be used in developing the State Water Commission budget for the 1993-1995 biennium.

The State Water Commission staff has also been concentrating its efforts on developing solutions and alternatives to address the problems and opportunities identified by the eight citizen advisory boards. The Bureau of Reclamation is providing technical engineering analysis on potential projects.

The fourth round of public meetings of the Citizens Advisory Boards will be scheduled during May, 1992.

**NA CHIIN HUUN -  
DAKOTA PROJECT UPDATE  
(SWC Project No. 237-4)**

At the February 4, 1992 meeting the Commission members were informed that hearings were being planned in Washington, DC before the Energy and Natural Resources Committee for the last week in February, 1992, and field hearings for the project were being planned for March, 1992. Secretary Sprynczynatyk indicated these hearings were postponed because of budget complications in Congress.

Secretary Sprynczynatyk stated negotiations with the Three Affiliated Tribes are continuing to

April 2, 1992

address issues of concern relative to the location of the intake, the Indian water right, and control of the facility.

**NORTH DAKOTA WATER USERS  
ASSOCIATION INITIATED TAX  
MEASURE UPDATE  
(SWC Project No. 1852)**

At the December 20, 1991 State Water Commission meeting, the members were informed that on November 26, 1991, the North Dakota Water Users Association voted to sponsor an initiated measure for a 1/2 cent sales tax for water development. Secretary Sprynczynatyk said, if successful, the tax would be in force from 1993 through 1999 and would raise about \$24 million per year. This money would go toward the projects and programs identified by the Governor's Water Strategy Task Force, including, but not limited to, Mid Dakota Reservoir, stabilization of Devils Lake, Southwest Pipeline Project, Na chin Huun - Dakota Project, MR&I, Contract Fund, and other features of the Garrison Diversion Project.

Secretary Sprynczynatyk stated approximately 13,000 signatures are required on the petition for the initiated measure, which could be placed either on the June primary ballot or on the November general election ballot. Secretary Sprynczynatyk reported that the North Dakota Water Users Association did not obtain the required signatures on the petitions to place the initiated measure on the June primary ballot. He said the Water Users will meet in May and at that time the decision will be made if the petitions will be filed to place the initiated measure on the November general election ballot.

**MISSOURI RIVER UPDATE  
(SWC Project No. 1392)**

Secretary Sprynczynatyk reported on the Missouri River lawsuit filed by the three upper basin states, North Dakota, South Dakota and Montana, challenging the Corps' policy of categorizing a project's authorized purposes as primary and secondary. A letter has been sent to Assistant Secretary of the Army of Civil Works, signed by 22 downstream senators, urging the US Army Corps of Engineers to "safeguard navigation on the Mississippi River by not reducing water flows on its largest tributary, the Missouri River." In addition, "they are asking the Bush Administration to stick to historical river management policies and not settle the lawsuit in favor of the upstream states."

Secretary Sprynczynatyk said it appears the lawsuit will continue to go through the discovery process and the court hearing, which probably will be scheduled in November or December, 1992.

April 2, 1992

**BALDHILL DAM SAFETY  
MODIFICATIONS  
(SWC Project No. 300)**

Dale Frink provided the Commission members with an update on the safety modifications of Baldhill Dam. He said the Corps of Engineers is currently doing an internal review of the project and discussed some of the items the Corps is considering in its' review of the project. The Corps' review and decision is anticipated in May, 1992.

At the February 4, 1992 meeting, the Commission members directed the State Engineer to contact the entities of the Eastern North Dakota Water Development Association informing them of the recent negotiations with the Corps of Engineers and stating that the major beneficiaries, those that share in the water allocation from Lake Ashtabula, may have to contribute to this project.

Secretary Sprynczynatyk stated a letter was sent to the beneficiaries of the project and to date the only response that has been received is from the City of Fargo, expressing an interest in the project.

**CONSIDERATION AND APPROVAL  
OF REQUEST FROM CENTURY  
SIDING & WINDOWS, INC. TO  
PLACE ADVERTISING SIGN ON  
SWC SHOP PROPERTY LOCATED AT  
26TH AND BROADWAY, BISMARCK**

A request was presented for the Commission's consideration from Century Siding & Windows, Inc. seeking permission to place a four foot by eight foot advertising sign on State Water Commission property located at the northeast corner of 26th and Broadway Avenue in Bismarck. They have obtained the necessary permit from the City of Bismarck.

Secretary Sprynczynatyk stated that several years ago the Commission considered and approved a request from Apollo Sales and Service, Inc., at a lease price of \$120 per year. A draft lease for Century Siding & Windows, Inc. was presented for the Commission's consideration, at a lease price of \$120 per year.

It was the recommendation of the State Engineer that the State Water Commission approve entering into a lease agreement with Century Siding & Windows, Inc., at an annual rental fee of \$120.

**It was moved by Commissioner Gust and seconded by Commissioner Kramer that the State Water Commission enter into a lease agreement with Century Siding & Windows, Inc., at an annual rental fee of \$120.**

April 2, 1992

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**JOINT MEETING OF STATE WATER  
COMMISSION AND GARRISON  
DIVERSION CONSERVANCY DISTRICT**

meeting of the State Water Commission and the Garrison Diversion Conservancy District to be held in July, 1992, possibly in the City of Garrison.

Secretary Sprynczynatyk informed the Commission members that tentative arrangements are being made for the annual joint

**CONSIDERATION AND APPROVAL  
OF REQUEST FOR RELEASE OF  
EASEMENT AND DEDICATION OF  
LINK DAM, MERCER COUNTY  
(SWC Project No. 1291)**

Secretary Sprynczynatyk presented a request for the Commission's consideration from the Coteau Properties Company that the State of North Dakota release the easement and dedication of Link Dam in Mercer County.

Link Dam is located in the NE1/4 of Section 13, Township 145 North, Range 87 West. The dam was constructed by the WPA in 1936 and apparently washed out a number of years ago. The drainage area comprises approximately 960 acres and the reservoir before the embankment washed out, covering approximately 2 acres with a capacity of approximately 10 1/2 acre-feet.

The Coteau Properties Company is the owner of a coal lease covering the above-described lands. Coteau is currently in the process of obtaining a permit to conduct mining activities on these lands. A clear title is required before mining operations can proceed. The State of North Dakota holds an easement and dedication to construct and inundate land in conjunction with the construction of the Link Dam. Coteau Properties Company has requested that the State of North Dakota release the easement and dedication.

Secretary Sprynczynatyk indicated that the legal requirements in releasing easements and dedications have been reviewed by Assistant Attorney General, Julie Krenz. Section 61-02-14.1 of the North Dakota Century Code requires the Governor to sign the release, which must be attested to by the Secretary of State. The Mercer County Water Resource Board has reviewed Coteau's request and after discussions with the landowners and Coteau representatives, recommended that the release be signed.

April 2, 1992

It was the recommendation of the State Engineer that the State Water Commission approve the release of easement and dedication for Link Dam.

It was moved by Commissioner Byerly and seconded by Commissioner Narlock that the State Water Commission approve the release of easement and dedication for Link Dam in Mercer County. SEE APPENDIX "C".

Commissioners Byerly, Farstveet, Gust, Kramer, Narlock, Rudel, Spaeth, and Chairman Omdahl voted aye. There were no nay votes. The Chairman declared the motion unanimously carried.

**STATE WATER COMMISSION AND  
ATMOSPHERIC RESOURCE BOARD**

At the December 20, 1991 State Water Commission meeting, a motion was passed supporting Governor Sinner's recommendation relating to the enhancement of the operations of the State Water Commission and the Atmospheric Resource Board.

The Atmospheric Resource Board appointed a subcommittee at its December 19, 1991 meeting to meet with the State Engineer to develop a workable policy from an administrative standpoint to enhance the operations of the State Water Commission and the Atmospheric Resource Board. On January 24, 1992, the Atmospheric Resource Board considered and adopted the policy statement of the subcommittee.

Secretary Sprynczynatyk stated he has met with the Director of the Atmospheric Resource Board to explore areas where administrative staff functions might be improved. To identify areas where routine efforts might be streamlined, the staff involved is currently preparing a listing of their respective duties and functions. From these lists, a matrix will be prepared and areas of potential collaboration and/or cooperation will be identified. Secretary Sprynczynatyk indicated he will be making a formal recommendation for the Commission's consideration at a future meeting.

**RESTORATION OF RUSH LAKE  
IN CAVALIER COUNTY  
(SWC Project No. 463)**

Secretary Sprynczynatyk informed the Commission members that the Cavalier County Water Resource Board has indicated it will be submitting a request for the Commission's consideration to cost share in the restoration of Rush Lake in Cavalier County.

April 2, 1992

**RENOVATION OF OLD  
STATE OFFICE BUILDING**

Secretary Sprynczynatyk briefed the Commission members on the progress of the renovation of the old State Office Building. The agency has been temporarily relocated pending completion of the renovation, with the Administration, Planning and Education, and Water Development Divisions located in the Massey-Ferguson Building and the Water Appropriation and Atmospheric Resource Divisions located in the Pinehurst Office Building.

There being no further business to come before the State Water Commission, it was moved by Commissioner Rudel, seconded by Commissioner Spaeth, and unanimously carried, that the State Water Commission meeting adjourn at 5:11 pm.



Lloyd B. Omdahl  
Lieutenant Governor-Chairman

SEAL



David A. Sprynczynatyk  
State Engineer and  
Chief Engineer-Secretary

April 2, 1992

NORTH DAKOTA STATE WATER COMMISSION

REGISTER

ATTENDANCE AT State Water Commission Meeting

DATE April 21, 1992 PLACE Bismarck, ND

PROJECT NO. \_\_\_\_\_

Your Name	Your Address	Who do you Represent? (Or Occupation)
CHUCK RIDELL	900 E. BLVD Bismarck	STATE WATER COMMISSION
Don Myer	Taylor	SWA
Asaf Undeshalt	Neboon	SWA
CHARLES VEIN	GRAND FORKS	ADVANCED ENGINEERING
Tim Fay	Bismarck	SWC Staff
Julie Krenz	"	Attorney General's Office
Kim Nett	"	" " "
Bob Saygo	Levis Lake	R C W R D
Mike [unclear]	Bismarck	AMERICAN ENGINEERING, PC.
Wayne Simon	RR 2 BOX 56 Ham pde N N.D.	R C W R D,
Richard Pagan	New Lake, N.D.	R. C. W. R. D.
Dennis Markson	Hafton, N.W.	Walsh COUNTY WATER RESOURCE DISTRICT
Cam [unclear]	Bismarck	SWC/SE
Walt L. Frink	"	"
Jim Tunington	Bis	SWC/SE

NORTH DAKOTA STATE WATER COMMISSION

R E G I S T E R

ATTENDANCE AT SWC meeting

DATE April 2, 1992 PLACE Bismarck

PROJECT NO. \_\_\_\_\_

Your Name	Your Address	Who do you Represent? (Or Occupation)
Gregg Thielman	Bismarck	SWC/SE
Bruce F McCollom	"	BW/BEC Engineering
NICK Kessel	Belfield,	SCWRD - W Mgr
Russell L Nelson	Dickinson	Stark Co. WRD - Evs
Fred Ryckman	Williston	ND Game & Fish Dept.
Mike Olson	Bismarck	US Fish & Wildlife Service
Donald I. Morgan	Box 460 New Town, N.D. 58763	Three Affiliated Tribes
Steve Dyke	Bismarck	N. D. Game & Fish Dept
Margaret Young Bean	P.O. Box 641 New Town, ND 58763	(IAT) MRF Water Project
Lee Kilgus	Bismarck	SWC

CHRONOLOGY OF EVENTS

West Fargo State Bank Lawsuit

February 19, 1988 - Contract 2-3A (main transmission line from Richardton to a point five miles west of Taylor) advertised. Eight miles of the pipeline follow old Highway #10 in Stark County.

April 10, 1988 - State Water Commission learns that Highway 10 has No. 2 load restrictions on it due to the poor condition of the roadway and that the cost of complying with these restrictions is estimated at \$200,000 - \$300,000.

April 11, 1988 - State Water Commission staff met with the Stark County Commission and negotiated an agreement that allowed the contractor to have the load restrictions lifted for \$64,000. Addendum #5 to Contract 2-3A bid documents was issued notifying bidders that No. 2 load restrictions on a stretch of old Highway #10 would be lifted on the condition of a 35 mph speed limit and payment of \$64,000. The addendum was hand-delivered to some of the bidders.

April 12, 1988 - Bids on Contract 2-3A opened.

June 20, 1988 - Contract 2-3A executed between Johnson Construction, Inc., and the State Water Commission.

July 15, 1988 - Stark County Commission, at a meeting with Johnson Construction, Inc., consents to reducing the fee to \$32,000 for lowering load restrictions. The State Water Commission was not involved in this meeting nor in the agreement.

July 1988 to April 1989 - Johnson Construction, Inc., completes about 95 percent of the construction on Contract 2-3A. The construction was completed without the No. 2 load limit restriction.

April 7, 1989 to June 15, 1989 - Johnson Construction undergoes bankruptcy; unfinished portions of contract 2-3A assigned to Barnard Construction Company. The \$32,000 is not paid to Stark County. Other unpaid claims include West Fargo State Bank, which requests that all payments due to Johnson Construction be made to them. Unpaid claims are referred to St. Paul Fire & Marine Insurance Company, which is Johnson Construction's surety.

June 7, 1989 - State Water Commission authorizes the State Engineer to negotiate with St. Paul Fire and Marine Insurance Company to reach an agreement which both protects the State Water Commission's interests and assures completion of the Southwest Pipeline Project Contracts 2-3A and 2-3B, and that prior to the

acceptance of any negotiated agreement, the State Water Commission consider the negotiated agreement.

June 15, 1989 - State Water Commission meets by conference call and authorizes the State Engineer to enter into contracts with Barnard Construction Company to complete Contracts 2-3A and 2-3B under terms "comparable to or equal to the terms of the existing contracts with Johnson Construction."

June 23, 1989 - It is determined that since Contract 2-3A is 95 percent complete, it will be finished on a force account basis without a new contract.

July 13, 1989 - Escrow account for Contract 2-3A retainage transferred to Lamb's Bank in Michigan, North Dakota.

August 24, 1989 - State Water Commission is informed at its regular meeting that the \$32,000 claim by Stark County has not been resolved.

September 18, 1989 - After correspondence with the surety regarding their payment of the \$32,000 to Stark County, the surety is informed that Stark County will be paid from the contract retainage if payment is not made.

November 1989 - After discussion with the surety's representative, it is decided to make final payment on Contract 2-3A and release all but \$32,000 of the retainage account to the surety, who was to settle with Stark County regarding the \$32,000. "Notice of Completion" of the contract is withheld pending settlement.

February 13, 1990 - Stark County notifies the State Water Commission that the \$32,000 has not been paid and requests payment.

March 27, 1990 - After discussions with the surety, they are informed that the \$32,000 remaining in retainage will be paid to Stark County.

April 5, 1990 - After receipt of funds from Lamb's Bank, a check for \$32,000 is issued to Stark County.

December 28, 1990 - Surety transfers its claim to the \$32,000 paid to Stark County to West Fargo State Bank.

May 21, 1991 - West Fargo State Bank notifies the Office of Management and Budget that it intends to sue the State Water Commission for \$32,000.

July 18, 1991 - A complaint was filed by West Fargo State Bank against the State Water Commission seeking \$32,000 plus interest.

August 30, 1991 - Attorney General requests Stark County to participate in the lawsuit. Stark County declines.

February 28, 1992 - Oral arguments heard in Fargo.

March 3, 1992 - The judge rules against the State Water Commission awarding \$32,000 and approximately \$16,000 interest to West Fargo State Bank.

Point Rating System  
For Prioritizing  
Garrison Diversion Municipal, Rural,  
and Industrial Water Supply Projects  
April 1992

Total Possible Score = 100 Points

Part I: Project Need  
Weight = 58 Points

Definitions:

**Multiple User Delivery System** - Water supply delivery system consisting of a central water supply source and distribution lines to multiple users.

**Shortage** - Deficit water delivery resulting in rationing or critical operational problem for domestic water supply.  
(gpdpc - gallons per day per capita)

**Category I Through V Water Quality Standard Violations** - As defined in the enclosed sheets.

The project type number is determined by matching the project to the highest applicable point value project description. Every project will fall within one project type only and will receive that project type's point value. A project cannot receive more than one project type point value.

**Proposed Project Involves:**

<u>Project Type</u>	<u>Description</u>	<u>Points</u>
1.	Correction of a problem involving the loss or imminent loss of a water supply in the near future to an existing multiple user delivery system.	<u>58</u>
2.	Correction of a severe quantity problem. The quantity problem results in severe shortages every year for an existing multiple user delivery system. (Current source provides less than 75 gpdpc).	<u>55</u>
3.	Correction of a Category I water quality condition for a multiple user delivery system. (Violate a primary water quality standard.)	<u>52</u>

4.	Correction to a quantity problem which does or will result in shortages more than once every two years on the average. (Current source provides 75 to 100 gpdpc).	<u>48</u>
5.	Construction of a new rural water system.	<u>45</u>
6.	Correction of a Category II water quality condition for a multiple user system. (Violation of three secondary standards and Total Dissolved Solids exceeds 1500 mg/l.)	<u>40</u>
7.	Correction of a Category III water quality condition for a multiple user system. (Violation of three secondary standards and Total Dissolved Solids exceeds 1000 mg/l.)	<u>35</u>
8.	Significant expansion or improvement of a water system. (Increase users more than 25 percent).	<u>30</u>
9.	Correction of a Category IV water quality condition for a multiple user system. (Iron greater than 0.6 mg/l or manganese greater than 0.1 mg/l.)	<u>25</u>
7.	Correction of Category V water quality condition for a multiple user system. (Violation of two secondary standards.)	<u>20</u>
10.	Correction to a quantity problem resulting in shortages. (Current source provides 100 to 150 gpdpc).	<u>15</u>
11.	Minor system expansion or system improvement. (Current source provides greater than 150 gpdpc or a system increase of users of less than 25 percent).	<u>10</u>
12.	Correction to a problem which could possibly cause the loss of a water supply at some time in the future.	<u>5</u>

(Secondary standard of pH is not considered in violation.)

**Part II: Miscellaneous Considerations**  
**Weight = 42 Points**

**A. Matching Funds:**

1. Local contribution to project.

100% of feasibility study costs =	1
100% of design costs =	2
50% of construction costs =	5
45% of construction costs =	4
40% of construction costs =	3
35% of construction costs =	0

**B. Location:**

Within C-District =	4
Both within and outside of C-District =	2
Outside C-District =	0

**C. Equitable Distribution of MR&I Funds:**

1) MR&I project costs.

Less than \$.3 million =	5
\$.3 million to \$1 million =	3
Greater than \$1 million =	0

2) Cost per capita benefited.

Less than \$500/person =	2
\$1000/person to \$500/person =	1
Greater than \$1000/person or recreation project =	0

**D. Ability to Pay:**

1) Community or rural service area size.

0-1200 population =	2
1200-10,000 population =	1
10,000 and above, or recreation =	0

2) Median household income of service area.

\$ 0 - \$13,400 =	2
\$13,400 - \$14,263 =	1
\$14,263 and above, or recreation =	0

**E. Economic Development:**

- |    |  |          |
|----|--|----------|
| 1. | Project will result in immediate large scale economic development.   | <u>7</u> |
| 2. | Project will result in immediate moderate scale economic development.  | <u>6</u> |
| 3. | Project will result in immediate low scale economic development.   | <u>5</u> |
| 4. | Project will result in the potential for large scale economic development.   | <u>4</u> |
| 5. | Project will result in the potential for moderate scale economic development.  | <u>3</u> |
| 6. | Project will result in the potential for low scale economic development.   | <u>2</u> |
| 7. | Project does not provide potential for additional economic development, but improves the water supply for existing business and community. | <u>1</u> |
| 8. | Project will have no effect on economic development  | <u>0</u> |

**F. Special circumstances**

Project involves documented special circumstance which increase the overall priority. 1 to 9

Project involves more than one of the above descriptions under part I, project need, which does not duplicate each other. 3

RELEASE OF EASEMENT AND DEDICATION

By Easement Dedication entered into between George Ludwig Link and Wilhelmina Link, husband and wife, as Lessors, and the State of North Dakota, as Lessee, dated September 1, 1936, recorded in Book 16, Page 439, of the Miscellaneous Records of Mercer County, North Dakota, there was granted to the State of North Dakota the right and easement to inundate so much of the NE $\frac{1}{4}$  of Section 13, Township 145 North, Range 87 West, as the construction and maintenance of a dam will cause to be inundated;

The State of North Dakota no longer uses nor has a need for the rights and interests granted in the Easement and Dedication and has abandoned said lands.

In consideration of the payment of Ten Dollars (\$10.00), paid by The Coteau Properties Company, receipt of which is acknowledged, the State of North Dakota releases unto the present owners, their successors, and assigns, all of its rights, title, and interest in the Easement and Dedication covering the following described lands in Mercer County, State of North Dakota:

Township 145 North, Range 87 West  
Section 13: NE $\frac{1}{4}$

STATE OF NORTH DAKOTA

By:

  
George A. Sninner, Governor

ATTEST:

  
\_\_\_\_\_  
Jim Kusler  
Secretary of State